CONSIDERATION — WHAT CONSTITUTES CONSIDERATION — PERFORMANCE OF PREËXISTING CONTRACT. — The plaintiff agreed to remodel houses for the defendant. After part performance the plaintiff refused to continue except on the promise of the defendant to change the time of payment. The defendant so promised and the plaintiff continued the work. *Held*, that the defendant's second promise is supported by good consideration. *Tobin* v. *Kells*, 93 N. E. 596 (Mass.).

The plaintiff agreed with one of the defendant's agents, about whose authority there was some question, to publish a guidebook. Later the defendant's duly authorized agent promised to pay the plaintiff's expenses in publishing the guidebook. *Held*, that if the plaintiff was bound by the first promise, the defendant's second promise was without consideration. *Parrot* v. *Mexican Central Ry. Co.*, 93 N. E. 590 (Mass.).

That doing what one is already legally bound to the promisor to do furnishes no consideration is the almost universal rule. *Westcott* v. *Mitchell*, 95 Me. 377; *Ayres* v. *Chicago, Rock Island & Pacific Ry. Co.*, 52 Ia. 478. An early Massachusetts decision, however, held that after the promisee had refused to perform, continuing to perform furnished consideration for the subsequent promise. *Munroe* v. *Perkins*, 9 Pick. (Mass.) 298. The latter of the principal cases would distinguish the former from the general rule on this ground, and would find consideration in that performance was secured instead of a mere right of action. But there is no real distinction. Though the promisee has the power to break his contract, he is legally bound not to exercise that power. *Lingenfelder* v. *Wainwright Brewing Co.*, 103 Mo. 578. Another ground for finding consideration is that the subsequent promise imports a rescission and waiver of the prior contract. *Peck* v. *Requa*, 13 Gray (Mass.) 407. But the facts in a case of this class do not support this theory, for neither party intends to annul the prior contract. See 8 HARV. L. REV. 27. In both principal cases, the promisee suffered no legal detriment, and as to both the view of modern authorities is that the subsequent promise is without consideration. See 17 HARV. L. REV. 71, 79.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — NATURE OF SENTENCE DEPENDENT ON DOCTOR'S CERTIFICATE AS TO HEALTH. — New York Laws of 1910, c. 659, §§ 77, 79, provide for a separate night court for women, and for a medical examination of women who are convicted of vagrancy. If the physician certifies that they are diseased, they are to be committed to a hospital until cured, or for a maximum period of one year. This may be a longer term than they would serve if not diseased. *Held*, that the statute is unconstitutional. *People ex rel. Barone* v. *Fox*, 69 N. Y. Misc. 400 (Sup. Ct.).

The court was undoubtedly correct in saying that there may be separate courts for women, for discrimination between the sexes is generally upheld. *Hoboken* v. *Goodman*, 68 N. J. L. 217; *In re Considine*, 83 Fed. 157. The statute, however, provides no opportunity for the prisoner to contest the correctness of the doctor's certificate as to her condition. The sentence is thus dependent entirely on the decision of a non-judicial officer, and though there is little authority, the court is probably right in declaring this a violation of the Fourteenth Amendment. *Matter of Kenny*, 23 N. Y. Misc. 9. It is unfortunate that this praiseworthy effort of the legislature to alleviate a deplorable condition should be checked in this manner, but the defect may be easily obviated by permitting an appeal from the physician's report. *Cf. People ex rel. Abrams* v. *Fox*, 77 N. Y. App. Div. 245. As this seems to be the first effort by a legislature in this direction, there is no direct authority as to the validity of a statute permitting such an appeal. But as the punishment is directed against all diseased women convicted under this statute, there can be little doubt that such a reasonable discrimination would be upheld. *Cf. People ex rel. Duntz* v. *Coon*, 67 Hun (N. Y.) 523; *Ex parte Liddell*, 93 Cal. 633.